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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,841	11/05/2001	Daniel J. Powers	US010599	8004

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EXAMINER

KRAMER, NICOLE R

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,841

Applicant(s)

POWERS ET AL.

Examiner

Nicole R. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/03/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/5/01; 4/15/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9, 11-14, and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of U.S. Patent No. 6,397,104. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have included connectors attached to the housing to connect the pads and battery to the defibrillator and to have employed any appropriate type of batteries as a power source since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

3. Claims 10, and 15-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of U.S. Patent No. 6,397,104 in view of U.S. Patent Application Publication 2003/0197487 ("Tamura").

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Tamura discloses the method of connection a self-contained power source (40) to a defibrillator (18) having a battery (42), and charging the battery with the power source (Abstract). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the supply module as disclosed by U.S. Patent No. 6,397,104 to charge a battery in the defibrillator as taught by Tamura in order to utilize replaceable batteries as a power source.

4. Claims 18-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,586,850. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have included the receptacles in a compartment disposed within a casing of the defibrillator and to have employed any appropriate type of batteries as a power source since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3, 9-17, 24-26, 33, and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,397,104 ("Miller"). The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to claims 1, 3, 9, 11-14, 17, and 25, Miller discloses a supply module (14) formed of a rigid material having an interior and removable attachable to a defibrillator (10), with an electrode pad (34) and a power source (32) disposed within compartments inside the supply module. The power source (battery pack 32) provides power to operate the defibrillator when the housing is attached to the defibrillator (col. 4, lines 25-40).

With respect to claims 10, 15-16, and 26, the power source (32) is operable to provide power to charge a battery (44) disposed in the defibrillator because battery pack 32 is electrically coupled via battery terminal 26 to power supply 44 (col. 4, lines 58-59).

With respect to claim 24, Miller discloses a defibrillator (10) and one field-replaceable component (supply module 14) that is attachable to the defibrillator.

With respect to claims 33 and 35, Miller discloses a method of powering a defibrillator (10) by inserting a cartridge (supply module 14) into the defibrillator, the cartridge having a power source (32) and an electrode pad (34). The power source (battery pack 32) provides power to operate the defibrillator when the housing is attached to the defibrillator (col. 4, lines 25-40). The power source (32) powers the defibrillator by powering a circuit (42) in the defibrillator.

3. Claim 2 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2003/0114885 ("Nova"). Nova discloses applicant's basic inventive concept of a housing (12) containing electrode pads (22) and a power source (32) for powering a defibrillator (50). Nova discloses a first connector (3) which electrically couples the electrode pads to the defibrillator, and a second connector (44) which electrically couple the power source to the defibrillator.

4. Claims 18 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,586,850 ("Powers"). The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Powers discloses a defibrillator (100) comprising circuitry, a receptacle (122a) for receiving a first battery (102a) for providing power to the circuitry and a second receptacle (102b) for receiving a self-contained power source (102b) for charging the first battery. The self-contained power source may be a battery (col. 6, lines 15-35),

5. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,658,316 ("Lamond"). With respect to claim 24, Lamond discloses a defibrillator (10) and one field-replaceable component (20) that is attachable to the defibrillator. The one field-replaceable component is power pack 20 which is removably attachable to the defibrillator (10). An electrode pad (14/16/18) is one integral unit with the housing (col. 3, lines 15-17, 44-45) and a power source (battery 22) is disposed in the housing and operable to provide power to the defibrillator when the housing is attached thereto. As such, power pack 20 is inherently capable of being the one and only field replaceable component of defibrillator 10.

6. Claims 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,641,585 ("Lessing"). Lessing discloses a fuel cell (10) to be used in medical devices (col. 4, line 53). Examiner considers "medical devices" to include defibrillators having circuitry. Fuel cell (10) includes a reservoir (fuel tank 18).

7. Claim 29 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2003/0197487 ("Tamura"). Tamura discloses the method of

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connection a self-contained power source (40) to a defibrillator (18) having a battery (42), and charging the battery with the power source (Abstract).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2003/0114885 ("Nova"). Nova discloses applicant's basic inventive concept of a housing (12) containing electrode pads (22) and a power source (32) for powering a defibrillator (50).

With respect to claims 4-6, Nova does not disclose specifically the type of battery being used. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have employed any appropriate type of batteries since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2003/0114885 ("Nova") in view of U.S. Patent No. 5,641,585 ("Lessing"). Nova does not disclose specifically the type of battery being

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used. Lessing discloses a fuel cell (10) to be used in medical devices (col. 4, line 53), the fuel cell including a reservoir (fuel tank 18). Examiner considers "medical devices" to include defibrillators. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have employed any appropriate type of batteries since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

10. Claims 19-20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2003/0197487 ("Tamura"). Tamura discloses a defibrillator (18) comprising circuitry (20/22/24/26/28); a receptacle (34) for receiving a first battery (42) for providing power to the circuitry and a self-contained power source (40) for charging the first battery. Receptacle 34 is a compartment within the defibrillator. Tamura fails to disclose that the power packs are disposed in separate receptacles. The configuration of the defibrillator receptacle is a matter of choice which a person of ordinary skill in the art would have found obvious. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.).

With respect to claims 22-23, the self-contained power source may be a battery or a fuel cell (paragraph 41). Claim 23 is rejected under 35 U.S.C. 103(a) as being

unpatentable over U.S. Patent Application Publication 2003/0197487 ("Tamura") in view of U.S. Patent No. 5,641,585 ("Lessing"). Tamura fails to disclose specifically that a fuel reservoir is coupled to the fuel cell. Lessing discloses a fuel cell (10) to be used in medical devices (col. 4, line 53), the fuel cell including a reservoir (fuel tank 18).

Examiner considers "medical devices" to include defibrillators.

11. Claims 30, 34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2003/0197487 ("Tamura") in view of U.S. Patent Application Publication 2003/0114885 ("Nova"). Tamura discloses the method of connection a self-contained power source (40) to a defibrillator (18) having a battery (42), and charging the battery with the power source (Abstract). Tamura does not disclose that the cartridge containing the self-contained power source (40) have an electrode pad. Nova teaches a component package (10) having an electrode pad (22) and a power source (32) disposed in the housing and operable to provide power to the defibrillator when the housing is attached thereto (paragraph 32). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have modified the power source (40) as disclosed by Tamura to be housed in a cartridge with electrode pads as taught by Nova in order to reduce the number of defibrillator parts.

12. Claims 31, 32, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2003/0114885 ("Nova") in view of U.S. Patent Application Publication 2003/0197487 ("Tamura") and further in view of U.S.

Patent No. 5,797,969 ("Olson"). As discussed above, Nova discloses applicant's basic invention of powering a defibrillator (50) by inserting a cartridge (10) into the defibrillator, the cartridge having a power source (32) and an electrode pad (22). Tamura discloses the use of a self-contained power source (40) for charging a battery (42) inside the defibrillator (18). Tamura and Nova do not specifically disclose generating an alarm when the power source or battery has a charge level that is lower than a predetermined level. Olson discloses an AED which automatically performs a self test on the battery charge state, and activates an audible indicator if faults are detected (Abstract). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have modified the defibrillation system as disclosed by Nova to include the alarm as taught by Olson in order detect when the power source or battery needs to be replaced.

Conclusion

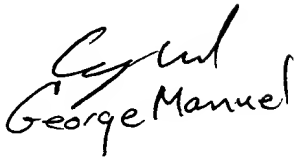
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,662,056.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole R. Kramer whose telephone number is 571-272-8792. The examiner can normally be reached on Monday through Friday, 8 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

nrk.


George Manuel